



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/765,588	04/25/97	HAYWARD	N 10441

HM22/1103  
SCULLY SCOTT MURPHY & PRESSER  
400 GARDEN CITY PLAZA  
GARDEN CITY NY 11530

EXAMINER

SAOUD, C

ART UNIT	PAPER NUMBER
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1647

DATE MAILED: 11/03/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Advisory Action

Application No.  
08/765,588

Applicant(s)  
HAYWARD et al.

Examiner  
Christine Saoud

Group Art Unit  
1647



THE PERIOD FOR RESPONSE: [check only a) or b)]

- a) ☐ expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☒ Appellant's Brief is due two months from the date of the Notice of Appeal filed on Oct 19, 2000 (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on Oct 19, 2000 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

- ☒ The proposed amendment(s):

- ☐ will be entered upon filing of a Notice of Appeal and an Appeal Brief.
- ☒ will not be entered because:
- ☐ they raise new issues that would require further consideration and/or search. (See note below).
- ☐ they raise the issue of new matter. (See note below).
- ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
- ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: The claim recites "an isolated nucleic acid comprising Figure 2 (SEQ ID NO:3). However, a nucleic acid cannot comprise a figure. It is suggested that the claim recite an isolated nucleic acid which comprises the sequence of Figure 2 (SEQ ID NO:3).

- ☒ Applicant's response has overcome the following rejection(s):

The cancellation of claim 51 and amendment of claim 47 to the suggested language of above will obviate all grounds of rejection

- ☐ Newly proposed or amended claims \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.
- ☐ The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:
- \_\_\_\_\_
- ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
- ☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: 28, 30, 33, 44-46, and 50

Claims objected to: \_\_\_\_\_

Claims rejected: 47, 51 (claims 1-25, 34, 37-42 are still pending, but non-elected)

- ☐ The proposed drawing correction filed on \_\_\_\_\_ ☐ has ☐ has not been approved by the Examiner.
- ☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

- ☒ Other Applicant states that the specification will be amended after allowance of the claims.

Note: amendments to the spec. after allowance do not always match to the case.

It is URGED that the amendment be sent in with the next response. Further, the non-elected claims should either be canceled, or a petition filed regarding the original restriction requirement.

CHRISTINE SAOUD  
PATENT EXAMINER

*Christine Saoud*